IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

MFA.No. 1233 of 2000(A)

OA.42/1999 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT: APPLICANTS
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1. A.HAMZA, S/O.SAYED ALI,
ALAKKAL HOUSE, P.O. MUNDAKKAI,
WYNAD DISTRICT.

BY ADV. SRI.V.V.SURENDRAN
SRI.R.PARTHASARATHY

RESPONDENTS: RESPONDENTS
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1. THE GOVERNMENT OF KERALA,
REP.BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2. THE CUSTODIAN OF VESTED FORESTS,
EX OFFICIO SPECIAL SECRETARY,
AGRICULTURAL (FOREST SPECIAL)

BY ADV. SRI.M.P.PRAKASH(SPL.GOVT.PLEADER,FOREST)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.7111/2000 IN M.R.A. NO.1233/2000

DISMISSED

03.07.2007 **SD/- J.B.KOSHY, JUDGE**
SD/- K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1233 of 2000

Dated this the 3rd day of July, 2007

Judgment

Koshy, J.

The appellant approached the Forest Tribunal, Kozhikode by filing O.A.No.13 of 1988 claiming that two acres of property in Survey No.1226 of Vellarimala village scheduled in the petition are exempted from vesting under the Kerala Private Forests (Vesting and Assignment) Act (hereinafter referred to as 'the Act'). Later, the extent of the land was amended as per order in I.A. No.40 of 2000 by making the extent as 5.70 acres. According to the appellant, the area in question was obtained by him as a tenant from one K.V. Savithri and he was cultivating the same with cardamom, coffee, arecanut etc. Forest officials came to the property on 6.3.1980 and tried to destroy the cultivation and improvements. Therefore, he approached the Forest Tribunal for getting exemption under section 3 (2) and 3 (3) of the Act. Admittedly, the purchase certificate produced as the documents of title was obtained only on 28.3.1979 (Ext.A1) and 6.8.1985 (Ext.A2) and he was not holding any

valid documents of title on the appointed day so as to claim exemption under section 3 (3) of the Act. It was also not proved whether Exts.A1 and A2 covered the same property. Therefore, only application under section 3 (2) was pressed. He also filed a suit before the Munsiff's court as O.S.No.309 of 1988 and for an injunction restraining the forest officials from entering into the property and disturbing the possession and enjoyment of the property. In that suit, he also obtained an ex parte commission report. The suit was dismissed as it is not maintainable in view of section 13 of the Act. It is pertinent to note that the O.A. was filed on 13.3.1988. The ex parte commission report in O.S. No.309 of 1988 is dated 20.6.1988. The Forest Tribunal originally dismissed the application, but, this court remanded the matter and the case was re-numbered as O.A. No. 42 of 1999. Only after re-numbering the case, extent of the land was amended from two acres to 5.70 acres. The Forest Tribunal again rejected the case with regard to plot A, B and C as per the plan annexed to the order. The above plan was marked as Ext.C2 and it was

produced by the advocate commissioner. With regard to plot D, no dispute was raised by the Forest Department.

2. The case of the appellant was that he has planted the area in question by cardamom, coffee etc. before the relevant date. The commission report Ext.C1 shows that only very few coffee and cardamom plants of very young age was found in the property. The tribunal did not believe that this was cultivated before 1971. According to the claimant, who was examined as PW1, he was cultivating coffee from 1963 onwards. The Commissioner was unable to see any coffee plantation cultivated in the property on the appointed day. For getting exemption under section 3 of the Act, the property in question should be under personal cultivation of the claimant on the appointed day, that is, 10.5.1971. According to the claimant, Ext.A4 is an order granting subsidy by the Coffee Board. Ext.A4 shows that appellant was given subsidy for cultivating two acres of land with robesta coffee in 1978. In fact, that establishes that there was no coffee plantation on 10.5.1971, the relevant date. Further, before 1990, curing and sale of coffee could be done on permission by the Coffee Board and no evidence was adduced to show that he sold coffee

with the permission of the Coffee Board prior to 1971 or even in 1980. He relied on the ex parte commission to show that plants were destroyed by the forest officials. The tribunal correctly found that as per PW1, cardamom was aged more than 30 years, but, usual life of the cardamom plants is 12 to 15 years. Therefore, deposition of PW1 cannot be accepted. Even according to the Commission report, in the Munsiff's Court, he has seen that all the plants (about 800 plants) aged about 18 to 20 years were destroyed. The tribunal found that since life span of cardamom plants is normally 12 to 15 years, possibility of having 800 cardamom plants aged 18 years is impossible and assessment of cardamom plants in 1988 by the commissioner cannot be relied on in Ext.A6. Further, the Commissioner who prepared Ext.A6 plan was not examined. The tribunal also noted that after filing the original application, there was no need to send an ex parte commissioner to the land in question as he could plead before the Forest Tribunal itself for injunction against the Forest officials and for appointing the commission.

3. With regard to cardamom cultivation also, no evidence was adduced to show that before 10.5.1971 any

cardamom was cultivated or he sold cardamom etc. Cardamom was also not sold through Cardamom Board prior to 10.5.1971. Ext.A7 photos were also not proved by any person competent to prove that it is the photograph of the scheduled property. No evidence was adduced by the appellant to show that he was personally cultivating the property on the appointed day. He also failed to show that he did not have land in excess of the ceiling limit provided under the Kerala Land Reforms Act as on 19.5.1971. After considering the entire evidence, as a finding of fact, tribunal held that there is no evidence to show that appellant was cultivating the property personally before the appointed date so as to claim benefit of section 3 (2) of the Act. We agree with this finding. Hence, we dismiss the appeal.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1233/2000

JUDGMENT

Dated:3rd July, 2007